93-79

Supreme Court, U.S.
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NO. 93 -

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

BETTY EDWARDS,

Petitioner
Versus

ARLINGTON HOSPITAL ASSOCIATION
AND EVELYN VARDIMAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the statements made concerning the petitioner constitute protected opinion under the First Amendment or actionable defamation under the test enunciated by the United States Supreme Court in abolishing the separate opinion doctrine in defamation law.

II. Whether the state court decision was based upon adequate, independent state grounds or whether the state court rested its decision primarily on federal law so as to permit United States Supreme Court review.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING WRIT OF CERTIORARI	20
I. THE STATEMENTS MADE CONCERNING THE PETITIONER DO NOT CONSTITUTE PROTECTED OPINION UNDER THE FIRST AMENDMENT, INASMUCH AS THEY CONTAIN PROVABLY FALSE FACTUAL CONNOTATIONS UNDER THE TEST ENUNCIATED BY THE UNITED STATES SUPREME COURT IN ABOLISHING THE SEPARATE OPINION DOCTRINE IN THE LAW OF DEFAMATION.	20
II. THE DECISION OF THE STATE COURT WAS NOT BASED ON ADEQUATE, INDEPENDENT STATE GROUNDS, BUT PRIMARILY ON FEDERAL LAW SO AS TO PERMIT REVIEW BY THE UNITED STATES SUPREME COURT.	32

PAGE

CONCLUSION 35

APPENDIX

1. Order, Arlington Circuit Court, July 9, 1992
2. Order, Denying Petition For Appeal, February 25, 1993
3. Order Denying Rehearing, April 16, 1993

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Gertz v. Robert Welch, Inc.,
418 U.S. 323, 94 S. Ct. 2997,
412 L. Ed. 2d 789 (1974) 21, 22, 34

Michigan v. Long,
463 U.S. 1032, 103 S. Ct., 3469,
77 L. Ed. 2d 1201 (1983) 34

PAGE

Milkovich v. Lorain Journal Co., et al.
497 U.S. 1, 110 S. Ct. 2695,
111 L. Ed. 2d 1 (1990)
20, 22, 23, 24, 26, 34

OTHER FEDERAL CASES

Blue Ridge Bank v. Veribanc, Inc.,
866 F. 2d 681 (4th Cir. 1989) 33

Chapin v. Greve,
787 F. Supp. 557 (E.D. Va. 1992)
23, 31, 33

Potomac Value and Fitting, Inc. v.
Crawford Fitting Co.,
829 F. 2d 1280 (4th Cir. 1987) 33

STATE COURT DECISIONS

Chaves v. Johnson,
230 Va. 112, 355 S.E. 2d 97 (1985)
31, 34

Immuno AG v. Moor-Jankowski,
567 N.E. 2d 1270, cert. denied,
497 U.S. 1021, 110 S. Ct. 3266,
111 L. Ed. 2d 776 (1990) 29, 30

Rinaldi v. Holt, Rinehart & Winston,
42 N.Y. 2d 369, 366 N.E. 2d 1299
(1977) 32

BETTY EDWARDS petitions for a Writ of Certiorari to the Virginia Supreme Court to review the Order denying the Petition For Appeal which issued on February 25, 1993, and the Order denying the Petition For Rehearing issued on April 16, 1993.

OPINIONS BELOW

The Order of the Virginia Supreme Court denying Petitioner's Petition For Appeal from a Final Judgment Order of the Circuit Court of Arlington County Virginia, was issued on February 25, 1993, App. at 8, and the Order denying the Petition For Rehearing was issued on April 16, 1993, App. at 9. The Order of the Arlington County Virginia Circuit Court was entered July 9, 1992, setting aside a jury verdict in favor of the Petitioner, App. at 1.

JURISDICTION

This court's jurisdiction to review the Virginia Supreme Court Order of April 16, 1993, is invoked pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

FIRST AMENDMENT TO U.S. CONSTITUTION

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

The Petitioner filed her Petition For Appeal to the Virginia Supreme Court from an Order of the Circuit Court of Arlington County Virginia setting aside a jury verdict in favor

of Petitioner on the basis that the statements made concerning her were constitutionally protected opinion rather than actionable defamation.

The issue concerning the opinion versus fact character of the statements was raised by the Respondents in a Motion To Strike the Petitioner's evidence made at the conclusion of Petitioner's case. The motion was denied and then renewed at the conclusion of all of the evidence. It was again denied, and the case was submitted to the jury for decision. Following the jury verdict, the Respondents made a motion to set aside the verdict and for judgment notwithstanding the verdict which motion was heard by the court on May 29, 1992. In the arguments made to the court and in supporting memoranda filed with the court, Respondents argued that under the Federal and

State constitutions, the statements at issue constituted protected opinion. The United States Supreme Court decision in Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990), as well as other federal cases, were cited and argued to the court by both parties.

Pertinent portions of the argument made to the court by Counsel for Petitioner in opposition to the Motion To Strike, in which the federal question was raised, are as follows:

> Your Honor, the plaintiff, with regard to the allegations that the statements are statements of opinion, we contend that the statements are not opinion. They are assertions of false, defamatory statements that can be characterized

> as true or false... I would like to also cite to the Court the case of Milkovich v. Lorain Journal Co. decided by the U.S. Supreme Court in June of 1990, holding that there is no need for a separate opinion privilege in the defamation law, that the safeguards in state defamation law are adequate without carving out a separate constitutional privilege. I'm sure the Court is familiar with the Milkovich opinion... In applying the test in Potomac Value v. Crawford, the question is whether the statement is verifiable...

In support of their motion to set aside the verdict and for judgment notwithstanding the verdict counsel for Respondents argued, in

pertinent portions, as follows:

> ...if we look at the cases where the statements were found to be fact, I think we can understand the opinion nature of this statement. If you look at Milkovich, the writer said, In my opinion, anybody could tell that the coach was lying when he testified... there was someplace to go to determine whether that was true or false. It could be objectively verified.

The trial court, in considering Respondents' motion to set aside the verdict and for judgment notwithstanding the verdict, ruled, as a matter of law, that the statements made concerning Petitioner were defamatory <u>per se,</u> but that they were loosely definable and variously interpretable; that they could not

be characterized as true or false; that they did not contain defamatory assertions of objective fact; that they were incapable of being proved true or false by objective means; and that they were nonactionable based on the legal authority cited in Respondent's memorandum of points and authorities supporting their motion to set aside the jury's verdict and for judgment notwithstanding the verdict. App. at 6.

When the court submitted the case to the jury for deliberation, the jurors were requested to answer three questions: 1) Were the statements made concerning the Petitioner false? 2) Were the statements made with common-law or actual malice? 3) If so, what should the damages be? The jury returned with a unanimous verdict in favor of the Petitioner. As to the question of whether the

statements were false, the response was affirmative. As to whether the statements were made with malice, the response was again affirmative. As the question of damages, the jury awarded the Petitioner $90,000.00 in compensatory damages.

The trial court set aside the verdict and granted the motion for judgment notwithstanding the verdict on the sole basis that the statements at issue were nonactionable statements of opinion. The jury found the statements to be false, and the court did not rule that the evidence submitted by Petitioner to prove the falsity of the statements was insufficient to support the verdict. Rather, the court ruled that due to the character of the statements, they could not, as a matter of law, be proved true or false. Therefore, the issue now presented is

whether the statements contain provably false factual connotations, not whether they are, in fact, false.

On March 27, 1990, a notice appeared in the Communications Book, maintained in the staff lounge on the psychiatric unit of Respondent Arlington Hospital. The notice concerned the Petitioner, a registered psychiatric nurse, and was prepared and signed by Evelyn Vardiman, Head Nurse of the Psychiatric Unit at that time. The notice stated that the Petitioner had been removed from the PRN (on call) Register "due to issues in regard to reliability" and implied that she had been counseled or reprimanded on three prior occasions concerning this issue by three specifically named individuals. The full text of the notice is as follows:

Betty Smith Edwards has currently

been dropped from the PRN pool due to issues in regard to reliability. Staff are not authorized to discuss this officially with Betty outside the hospital or in the hospital -- refer her to Mike Malone in personnel. Phil Gaffney has spoken to her, Kim spoke to her in the past and I have talked to her. There is no reason for anyone to speak to her on this issue. Thank you -- we will be discussing this further as a Staff in staff meet. re: parameters of PRN pool.

Evelyn

The Communications Book was regularly maintained in the staff lounge of the Psychiatric Unit and functioned primarily as a bulletin board to communicate information of

various types to the staff at large. The staff comprised not only psychiatric nurses, but many other categories of employees as well. Other categories of employees on staff included; student nurses, psychiatric technicians, various types of therapists, social workers, student social workers, secretaries, maid and janitorial employees. All employees on staff had access to the staff lounge where the Communications Book was maintained, including visiting physicians and personnel from other hospitals.

No notice of this type had ever appeared in the Communications book previously, as publication in the Communications Book was not the normal method of conveying information concerning an employee's status. Other nurses were removed from the register at the same time Petitioner was removed, and no notice

concerning any of them appeared in the Communications Book.

The Petitioner had been employed by the Respondent Arlington Hospital Association as a registered psychiatric nurse on the Psychiatric Unit on the PRN or "on call" register for ten (10) years when she was removed in March, 1990. PRN nurses did not have any particular number of hours of shifts they were required to work, as they were not full time employees. Their hours were negotiated between them and the Hospital. A PRN nurse might remove herself from the register for an entire summer. If a PRN nurse was unable to work a previously scheduled shift, it was an acceptable practice for the PRN nurse to send in an appropriate replacement from the PRN pool, although this was not a requirement.

It is uncontroverted that "reliability" encompasses the whole question of professional competence. Further, the notice concerning Petitioner's "reliability" did not confine itself to any particular time period. The evidence submitted by Petitioner and considered by the jury to prove the falsity of the statements in the notice consisted of testimony of supervisors and co-workers concerning her job performance, performance evaluations from 1980 through 1989, and a comparison summary of hours actually worked by all PRN nurses for 1988 and 1989.

The testimony concerning Petitioner's job performance as a psychiatric nurse is summarized as follows: She was a highly competent nurse who administered excellent patient care; she was very compassionate and caring and had good rapport with her patients;

she was good in helping patients who were withdrawn to communicate with others; she had a calming effect on very aggressive, assaultive type of patients; she frequently came in on short notice, in bad weather and was never late reporting for a shift; she was someone they could count on to come in snow storms and after being called at the last minute; she postponed vacation plans if she was needed on the unit; she was accurate in medication administration; she was cool and calm in a crises; she worked so frequently that she was considered part of the permanent staff.

The evidence was also uncontroverted that in terms of actual hours worked by PRN nurses for 1988, Petitioner ranked third out of twenty-six PRN nurses on the register. In 1989, Petitioner ranked fourth out of twenty-

six PRN nurses on the register.

Petitioner received yearly performance appraisals from 1980 though 1989. Her 1980 performance appraisal stated:

> She is very reliable and available - works well with staff and patients.

Her 1986 performance appraisal, in relevant portions, stated:

> She is able to effectively establish a therapeutic relationship with her assigned patients. She has a caring and empathetic manner which helps patients trust and feel safe with her... Betty is consistently on time for all scheduled shifts. If she has a change of plans after she has committed to work on PTU, she will find an appropriate replacement... She has remained available and

flexible with the various staffing needs during her work in the pool. She has worked on short notice when the unit was extremely busy.

Plaintiff's 1988 Performance Appraisal, in relevant portions, stated:

She develops a therapeutic relationship with her patients and consistently utilizes good judgment in the delivery of her patient care... She is able to prioritize well in crisis situations, and maintains a calm, positive demeanor during very stressful periods on the unit... Betty arrives on time to all scheduled shifts and advises AHN of availability for additional shifts ahead of time... Betty was extremely supportive of PTU during a major

staffing turnover this past year covering holes on other than her preferred shift. she also postponed vacation plans to lend her support while several new staff members transitioned on to the unit.

Her 1989 performance appraisal, in relevant portions, stated:

> She works frequently and has come in on short notice... She has arrived on time and has accommodated the unit by covering some day and night shifts when staffing was very short. This evidenced real commitment on her part... Despite the PRN status, she is perceived as an extension of the permanent staff... Despite a brief period of personal crisis - Betty has never allowed her personal

life to effect her relationship with patients or colleagues in a negative way. Her reliability has generally been outstanding. When she has had to make a change after she has committed to a shift, she finds an appropriate replacement and alerts ANH. (emphasis added)

Petitioner was required, by reason of personal problems, to remove herself from scheduled shifts for periods of time in January, February and March, 1990. She was granted full permission by the then Head Nurse to be absent from these shifts. She was advised to let them know when she was ready to return to work. She was not advised that her position was in jeopardy in any way or that her reliability had been called into question. Petitioner never failed to show up for work

without permission, notice, and when possible, sending in an appropriate replacement, although this was not required due to the nature of a PRN's position.

When Petitioner returned to work in March, 1990, she was informed by the Head Nurse at that time, Respondent Evelyn Vardiman, that she had been removed from the PRN register. Several days later Petitioner contacted Respondent Evelyn Vardiman and requested written reasons for her removal. No written reasons were ever provided to Petitioner as per her request. Rather, on March 27, 1990, a notice appeared in the Communications Book, accessible to anyone who used the staff lounge, that Petitioner had been removed from the PRN register "due to issues in regard to reliability" and further implying that Phil Gaffney, Kim Donahue and

Evelyn Vardiman had all previously counseled or reprimanded her concerning that issue.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE STATEMENTS MADE CONCERNING THE PETITIONER DO NOT CONSTITUTE PROTECTED OPINION UNDER THE FIRST AMENDMENT, INASMUCH AS THEY CONTAIN PROVABLY FALSE FACTUAL CONNOTATIONS UNDER THE TEST ENUNCIATED BY THE UNITED STATES SUPREME COURT IN ABOLISHING THE SEPARATE OPINION DOCTRINE IN THE LAW OF DEFAMATION.

The Supreme Court's decision in Milkovich v. Lorain Journal Col, 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) changed the contours of actionable speech under the Federal Constitution. Recognizing the existing safeguards in state defamation laws, the Supreme Court held that the First Amendment does not require a separate opinion privilege limiting the application of state defamation

laws. The Court recognized that statements on matters of public concern must be provable as false before they are actionable. Matters of public concern which do not contain a "provably false factual connotation" receive full constitutional protection. The Court also recognized protection for statements that cannot reasonably be interpreted as stating actual facts about an individual.

In pre-Milkovich decisions, the Federal and State courts held that statements of opinion were protected from defamation actions by the First Amendment. These holdings were primarily based upon the following dictum in Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974):

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may

> seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

Gertz at 339 - 340.

The Supreme Court in Milkovich held, however, that this passage from Gertz was not intended to create a wholesale defamation exception for anything that might be labeled as opinion. The "breathing space" which freedoms of expression require in order to survive is adequately secured by existing constitutional doctrine without creating an artificial dichotomy between opinion and fact. Milkovich at 2706. Any other interpretation, said the court, would be contrary to the tenor and context of the Gertz passage and would

also ignore the fact that expressions of opinion may often imply an assertion of objective fact.

The United States District Court for the Eastern District of Virginia recently recognized in Chapin v. Greve, 787 F. Supp. 557 (E.D. Va. 1992), that even if a challenged statement cannot be characterized as true or false and is, thus, constitutionally protected opinion, a further inquiry is mandated under Milkovich, namely, whether the statement contains provably true or false factual connotations that render it actionable.

In Respondent's memorandum of points and authorities, cited in the trial court's Order, they ostensibly relied upon both State and Federal law to support the proposition that pure expressions of opinion cannot form the basis of an action for defamation. However, a

closer examination of the decision in Chaves v. Johnson, 230 Va. 112, 355 S.E. 2d 97 (1985), upon which Respondents primarily relied to support their state constitutional argument, reveals that the Court relied principally upon the aforesaid passage from Gertz. This was the exact passage found by the Supreme Court in Milkovich to be inappropriately relied upon in determining the character of statements as opinion versus fact. Therefore, the state constitutional basis for the decision is flawed by the later pronouncements of the Supreme Court in Milkovich. Although the Court in Chaves made a passing reference to Article I, Section 12 of the Virginia constitution in connection with the First Amendment to the Federal Constitution, the Court proceeded to quote the Gertz passage as a basis for the decision.

Moreover, Article I, Section 12 of the Virginia Constitution does not afford a person unbridled discretion to speak without responsibility, but rather recognizes the balance to be struck between the right of free expression and the right of defamed individuals to hold the speakers responsible for damage to reputation. Article I, Section 12 provides:

> That the freedom of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write and publish his sentiments on all subjects, <u>being responsible for the abuse of that right ...</u> (emphasis added)

It is beyond cavil that the statements

made concerning Petitioner are capable of being characterized as true or false, as shown by the objective core of evidence submitted by Petitioner to prove their falsity. However, certainly when viewed in light of the further inquiry mandated by Milkovich, these statements contain provably false factual connotations that render them actionable. The statement published in the Communications Book, where no notice of it's kind had ever appeared before, stated that the Petitioner had been dropped from the PRN pool due to issues in regard to her reliability.

As discussed, supra, the notice went on to imply that she had been counseled or reprimanded about unreliability on three prior occasions by three specifically named individuals. There are a myriad of adverse facts which a reasonable reader could imply

about Petitioner after reading this notice, e.g., that she had mixed up patient's medications or failed to follow doctor's orders. It was uncontroverted that Petitioner was a competent psychiatric nurse and, indeed, her performance evaluations from 1980 until the last one performed in 1989 substantiate that fact. Her reliability was rated as "outstanding."

In citing the reasons for Petitioner's rating of "outstanding" in her performance evaluations, Respondent defined the components of reliability on which it relied in so doing. Those components defined by Respondent include the following:

> She develops therapeutic relationships with patients...
>
> Exercises good judgment in patient care...

Maintains calm, positive demeanor during stressful periods...

Arrives on time to all scheduled shifts...

Worked frequently and on short notice...

Never allowed personal life to effect her relationship with patients or colleagues in a negative way...

When she has to make a change <u>after</u> committing to a shift, she finds an appropriate replacement and alerts Assistant Head Nurse...

Therefore, Respondents' argument that the particular components considered in assessing one's reliability are completely subjective is without merit, as the Respondent Hospital itself defined those components in this particular hospital community.

The statements concerning these prior

conversations concerning her reliability are clearly capable of being objectively characterized as true or false. They either occurred in the manner portrayed or they did not.

Even applying the rationale enunciated by the Court of Appeals of New York in Immuno AG V. Moor-Jankowski, 567 N. E. 2d 1270 (1991), cert. denied, 497 U.S. 1021, 110 S. Ct.3266, 111 L. Ed. 2d 776 (1990), there is nothing in the words themselves or the overall context of the notice to suggest that the statements were statements of opinion. In Immuno, the court stated that in determining whether speech is actionable, courts must additionally consider the impression created by the words used as well as the general tenor of the expression from the point of view of the reasonable

reader. Immuno at 1273.[1] Unlike the statements in Immuno, the statements concerning Petitioner did not appear in a letter to the editor or in any other place

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[1] In Immuno, the United States Supreme Court granted certiorari, vacated the judgment of the New York Court of Appeals and remanded the case for further consideration in light of the decision in Milkovich. The New York Court of Appeals had originally held that the statements were constitutionally protected opinion under the State and Federal guarantees of free speech. When considering the case on remand, the New York Court of Appeals again held that the statements were protected opinion but asserted an independent state ground as a basis for the decision so as to foreclose further review by this court. Certiorari was then denied.

where one would expect statements of opinion to be located. This was a statement concerning an adverse personnel action which appeared in a place where no notice of this kind had ever appeared before.

The character of the statements concerning Petitioner was also vastly different than the character of the statements made in other cases relied upon by the trial court. In Chaves v. Johnson, the court held that a charge of inexperience was not defamatory. In Chapin v. Greve, 787 F. Supp. 557 (E.D. Va. 1992), the Court held that the statements were not defamatory and further that the plaintiff had thrust himself into the public arena where open criticisms could be expected. In stark contrast, Petitioner was a private citizen who had in no way thrust herself into the public arena. Even in

Rinaldi v. Holt, Rinehart & Winston, 42 N.Y. 2d 369, 366 N.E. 2d 1299(1977), where the plaintiff was a public official, the court stated that the allegations that the judge was "probably corrupt" were actionable. However, unlike the Petitioner herein, in that case the plaintiff failed to introduce evidence to create a triable issue of fact concerning those particular allegations.

The statements made concerning Petitioner clearly contain probably false factual connotations and should be examined in light of Milkovich. The state court has decided a federal question that conflicts with applicable decisions of this court.

II. THE DECISION OF THE STATE COURT WAS NOT BASED ON ADEQUATE, INDEPENDENT STATE GROUNDS, BUT PRIMARILY ON FEDERAL LAW SO AS TO PERMIT REVIEW BY THE UNITED STATES SUPREME COURT.

The state court's Order holding that the

statements at issue were nonactionable expressions of opinion was not based on adequate and independent state grounds and, therefore, the United States Supreme Court has jurisdiction to review the case in light of Milkovich. Moreover, in denying the Petitioner's appeal, the Virginia Supreme Court has not decided the case on adequate and independent state grounds. There is, therefore, no impediment to Supreme Court review of this case.

In holding that the statements at issue constituted protected opinion the trial court relied upon the following Federal cases: Milkovich v. Lorain Journal Co., supra, Potomac Value and Fitting, Inc. v. Crawford Fitting Company, 829 F. 2d. 1280 (4th Cir. (1987); Blue Ridge Bank v. Veribanc, 866 F. 2d 681 (4th Cir. 1989) and Chapin v. Greve,

supra. The state court decision relied upon to support this proposition was Chaves v. Johnson, supra. The court in Chaves, however, relied upon the exact passage from Gertz, later determined by the court in Milkovich to be inappropriately relied upon in determining opinion versus fact. Therefore, the state law relied upon by the trial court can not be considered an adequate and independent state ground so as to preclude review by this court.

The references to the State Constitution in Chaves in no way indicated that the decision in that case rested on grounds in any way independent from the state court's interpretation of federal law. See, Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983). Similarly, in this case, the trial court did not explicate whether the decision was based on federal or state law.

Rather, it fairly appears that the court rested its decision on federal law. The cases cited and argued to the court involve the interpretation and application of federal law.

CONCLUSION

In summary, this Petition should be granted because important constitutional questions are presented concerning the opinion doctrine in defamation law after Milkovich and merit a full exposition by the Court. The decision of the state court is in conflict with federal law as decided by this court.

Respectfully submitted,

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APPENDIX

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BETTY EDWARDS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	At Law No. 90-1254
	:	
ARLINGTON HOSPITAL ASSOCIATION, et al.,	:	
	:	
Defendants.	:	

FINAL JUDGMENT ORDER

THIS CAUSE came on to be heard before a jury and the undersigned on April 8, 9, 13, and 14, 1992, and before the undersigned on Motions Day on May 29, 1992, upon the pleading heretofore filed. The entire proceedings were recorded by a court reporter duly sworn. As the proceedings began, potential jurors were duly called and examined upon voir dire. One juror was struck for cause and each side

struck three jurors leaving seven jurors who were then sworn to well and truly try the issues joined.

Following the impaneling of the jury, the plaintiff presented her proof which included the testimony of witnesses and the introduction of exhibits. After plaintiff rested, defendants moved to strike the evidence of the plaintiff and for entry of Summary Judgment. Those motions were denied without prejudice, and the defendants' objections were duly noted.

Thereafter, the defendants presented their proof, including the testimony of their witnesses and the introduction of exhibits. Defendants then rested their case, and the plaintiff presented rebuttal evidence. At the close of all the evidence, the defendants renewed their Motions to Strike the

plaintiff's evidence and for Summary Judgment. The Court denied defendants' motions. The parties' objections to the rulings adverse to each were duly noted.

While preserving all arguments and bases for their Motions to Strike and all objections to the Court's rulings thereon, counsel then submitted and argued their respective jury instruction requests, the Court granting some and refusing others as to each party as the record reflects (specifically including a rejection of plaintiff's request for a punitive damages instruction), to which action the parties noted their respective objection to adverse rulings. The Court thereupon instructed the jury, and counsel for each party in the case delivered final arguments. The jury then retired to deliberate its verdict, and in due course on April 14, 1992,

returned with a unanimous verdict in favor of the plaintiff and awarded plaintiff Ninety Thousand Dollars ($90,000.00) in compensatory damages. At defendants' request, the jury was polled, and in response, each of the seven jurors confirmed the unanimous verdict as his or her separate verdict.

Following the return of the jury's verdict, the defendants request for time in which to file post-verdict motions was granted by the Court. The Court also designated a time within which plaintiff could file an opposition to the defendants' post-verdict motions.

Within the time designated, defendants filed a motion to set aside the jury verdict and enter judgment notwithstanding the verdict on behalf of each defendant, and, in the alternative, for a new trial or remittitur,

and a supporting memorandum of points and authorities. Within the designated time, plaintiff filed a Memorandum of Points and Authorities opposing the defendants' motions.

After being duly noticed, defendants post-verdict motions were heard on May 29, 1992, before the undersigned.

The Court having fully considered the pleadings, the evidence adduced at trial, the Memoranda of Points and Authorities submitted by the parties, and the arguments of counsel, the Court finds and concludes as a matter of law that:

1. the statements are defamatory <u>per se;</u> however;

2. the statements are loosely definable and variously interpretable;

3. the statements cannot be objectively characterized as true or false;

4. therefore, they are opinion statements rather than fact statements;

5. the statements of opinion do not contain defamatory assertions of objective fact;

6. due to the nature of the statements, plaintiff cannot prove their falsity nor can defendants prove their truth by objective means;

7. the statements are nonactionable based on the legal authority cited in defendants' memorandum of points and authorities supporting their motion to set aside the jury's verdict and for judgment notwithstanding the verdict.

The Court further finds and concludes as a matter of law, for the reasons set forth above, that the defendants' motion to set aside the jury verdict and to enter judgment

notwithstanding that verdict in favor of the defendants should be granted; it is, therefore,

ADJUDGED AND ORDERED that the jury verdict in favor of the plaintiff is hereby set aside, and that judgment notwithstanding the jury verdict is entered in favor of the defendants, The Arlington Hospital Association and Evelyn Vardiman. The objection and exception of the plaintiff is duly noted.

ENTERED AS A FINAL ORDER this 9th day of July, 1992.

Benjamin Kendrick, Judge

# # # # # # #

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 25th day of February, 1993.

Betty Edwards,

Appellant,

against Record No. 921554
Circuit Court No. L-90-1254

Arlington Hospital Association, et al.,
Appellees.

From the Circuit Court of Arlington County

Upon review of the record in this case and consideration of the arguments submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the

petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By:

Deputy Clerk

# # # # # # #

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 16th day of April, 1993.

Betty Edwards,

Appellant,

against Record No. 921554
Circuit Court No. L-90-1254

Arlington Hospital Association, et al.,

Appellees

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 25th day of February, 1993 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach

Clerk